

CASE NO. 29-RC-172410

REQUEST FOR REVIEW

EXHIBIT A-2

**(SUPPLEMENTAL DECISION ON
OBJECTIONS AND CERTIFICATIONS OF
REPRESENTATIVE CASE NO. 29-RC-
172410)**

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

NEW YORK METHODIST HOSPITAL AND
MSO OF KINGS COUNTY, LLC,
A SINGLE EMPLOYER

Employer

and

1199 SEIU, UNITED HEALTHCARE
WORKERS EAST

Petitioner

Case No. 29-RC-172410

**SUPPLEMENTAL DECISION ON OBJECTIONS AND
CERTIFICATIONS OF REPRESENTATIVE**

On March 23, 2016,¹ 1199 SEIU, United Healthcare Workers East, herein called the Petitioner, filed a petition seeking to represent certain employees employed by New York Methodist Hospital and MSO of Kings County, LLC, a single employer.

Pursuant to a Decision and Direction of Election, issued by the undersigned on June 24, an election by secret ballot was conducted on July 8, among the employees in the following three units:

Voting Group A:

All full-time and regular part-time administrative assistants and office assistants employed by the Employer in the Urology practice located at One Prospect Park West, Brooklyn, New York, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

The Decision and Direction of Election indicated that if a majority of the valid ballots in the election were cast for the Petitioner, the employees in the above appropriate voting group would be deemed to have indicated their desire to be included in the existing clerical employee bargaining unit currently represented by the Petitioner, and it would bargain for those employees as part of that unit. If a majority of the valid votes cast were against representation, the employees would be deemed to have indicated their desire to remain unrepresented, and a certification of results would be issued.

¹ All dates hereinafter are in 2016 unless otherwise indicated.

Voting Group B:

All full-time and regular part-time clinical assistants (LPNs) employed by the Employer in the Urology practice located at One Prospect Park West, Brooklyn, New York, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

The Decision and Direction of Election indicated that if a majority of the valid ballots in the election were cast for the Petitioner, the employees in the above appropriate voting group would be deemed to have indicated their desire to be included in the existing technical employee bargaining unit currently represented by the Petitioner, and it would bargain for those employees as part of that unit. If a majority of the valid votes cast were against representation, the employees would be deemed to have indicated their desire to remain unrepresented, and a certification of results would be issued.

Voting Group C:

All full-time and regular part-time patient/medical assistants employed by the Employer in the Urology practice located at One Prospect Park West, Brooklyn, New York, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

The Decision and Direction of Election indicated that if a majority of the valid ballots in the election were cast for the Petitioner, the employees in the above appropriate voting group would be deemed to have indicated their desire to be included in the existing service employee bargaining unit currently represented by the Petitioner, and it would bargain for those employees as part of that unit. If a majority of the valid votes cast were against representation, the employees would be deemed to have indicated their desire to remain unrepresented, and a certification of results would be issued.

On June 30, the Employer filed a Request for Review of the Decision and Direction of Elections and sought a stay of the elections. On July 7, the Board denied the Employer's request to stay the elections.

The Tallies of Ballots

Voting Group A:

The Tally of Ballots for Voting Group A made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	10
Number of void ballots	0
Number of ballots cast for the Petitioner	9
Number of votes cast against	

participating labor organization	1
Number of valid votes counted	10
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	10

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes counted have been cast for Petitioner.

Voting Group B:

There was a determinative challenge to the only ballot cast in Voting Group B. Pursuant to a Supplemental Decision on Challenges issued by the undersigned on July 18, that ballot was opened and counted on July 21. The Revised Tally of Ballots for Voting Group B made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	1
Number of void ballots	0
Number of ballots cast for the Petitioner	1
Number of votes cast against participating labor organization	0
Number of valid votes counted	1
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	1

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes counted have been cast for Petitioner.

Voting Group C:

The Tally of Ballots for Voting Group C made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	2
Number of void ballots	0
Number of ballots cast for the Petitioner	1
Number of votes cast against participating labor organization	0
Number of valid votes counted	1
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	1

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes counted have been cast for Petitioner.

The Employer filed timely objections alleging conduct affecting the results of the elections. The Employer's objections are attached hereto as Exhibit A.²

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the Employer's objections during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

I. Notices of Election and Ballots

In paragraphs 2A and 2B of its objections, the Employer alleges that the sample ballot attached to the Official Notice of Election failed to advise voters whether they were voting to join the existing clerical unit, the technical unit, or the service unit. In paragraph 4A of the objections, the Employer alleges that the sample ballot failed to advise employees that they were voting for whether to be included in an existing bargaining unit of employees employed by the Employer. In paragraph 7B, the Employer alleges that the Notice of Election destroyed the laboratory conditions necessary for a fair election. In paragraphs 10A and 13B of its objections, the Employer alleges that the Regional Office affected the results of the election by conducting these elections using identical ballots that failed to advise employees which unit they were voting in or that they would be included in an existing unit already subject to a collective bargaining agreement. The Petitioner asserts that these allegations are without merit.

In its offer of proof, the Employer submitted a single page, the third of four, from the notice of election which contained the date, time, and place for the election, and the sample ballot. The sample ballot and the election ballot contain the question: "Do you wish to be represented for purposes of collective bargaining by 1199 SEIU United Healthcare Workers East?"

Discussion

Notices of Election

The Board uses notices of election, not ballots, to "inform eligible voters of the balloting details. The notice contains a sample ballot with the names of the parties inserted, a description of the bargaining unit, the date, place, and hours of the election, and a statement of employee rights under the Act. Other relevant details are inserted where necessary." NLRB, An Outline of Law and Procedure in Representation Cases, Section 24-423. Notices are posted for three days prior to elections, which gives employees an opportunity to read the election details and instructions.

The Board's Casehandling Manual (Part 2) Representation Proceedings specifies that notices of election in a self-determination election, such as this one, must include language

² The Employer submitted two sets of objections, one on behalf of New York Methodist Hospital and another on behalf of MSO of Kings County, LLC. For purposes of citing objections in this Decision, I will refer to the objections attributed to New York Methodist Hospital as paragraphs 1A through 12A; I will refer to the objections attributed to MSO of Kings County, LLC as 1B through 15B.

explaining the potential outcomes of the election. See Casehandling Manual (Part 2) Representation Proceedings, Sections 11091.2 and 11314.5. The second page of the notice of election in this case included unit descriptions as well as the required language for each unit:

If a majority of the valid ballots are cast for 1199SEIU United Healthcare Workers East, the employees in the above voting group [A, B, or C] will be deemed to have indicated their desire to be included in the existing [clerical, technical, or service] bargaining unit currently represented by 1199SEIU United Healthcare Workers East. If a majority of valid ballots are not cast for representation, the employees will be deemed to have indicated their desire to remain unrepresented.

Thus, the notice clearly explained the bargaining units, the choices before each voter, and all potential outcomes.

Election Ballots

Just as the notice of election, the ballots and sample ballots in this case complied with the requirements of the Board's Casehandling Manual. Section 11306.2 of the Casehandling Manual provides: "The question on the ballot should accord with the election agreement or the direction of election. (With respect to the wording on a 'self-determination' ballot involving professional employees, see Sec. 11090.1). The choices on the ballot, likewise, will be dictated by the basis of the election." The direction of election in this case stated, "[e]mployees will vote whether or not they wish to be represented for purposes of collective bargaining by 1199 SEIU, United Healthcare Workers East." There is no indication in the Manual that additional language or directions should have been added to the ballot.

The Casehandling Manual distinguishes between self-determination elections in cases involving professional employees and self-determination elections which do not involve professional employees, such as this one. In cases involving professional employees, who may vote to be included in a unit with non-professional employees, the ballots require additional language regarding those choices. See Casehandling Manual (Part 2) Representation Cases at Section 11091.1. The Manual makes no such provision for other types of self-determination elections.

The Employer's assertion that the sample ballots and the election ballots should advise employees about the unit and the self-determination nature of the election is erroneous. The notice of election adequately notified employees about the three appropriate units, the nature of the election, and all potential outcomes. There is no evidence that the Employer posted incomplete notices of election or posted the notices for less than the required time. I further note that the Employer has not offered any evidence that voters were confused by the notice of election or the ballots. For these reasons, I overrule paragraphs 2A and 2B, 4A, 7B, and 10A and 13B of the Employer's objections alleging that the Notices of election and ballots used during the election were inadequate.

II. Identity of the Employer

In paragraph 3A of the objections, the Employer alleges that employees were not informed that the Decision and Direction of Election “altered” their employer’s status from working for MSO of Kings County to New York Methodist Hospital. In paragraph 3B of the objections, the Employer alleges that unit employees were not informed that New York Methodist Hospital would be their employer, instead of MSO of Kings County, if they voted for union representation. In paragraph 4B of the objections, the Employer alleges that unit employees were not advised on the ballot that their employer would no longer be exclusively MSO of Kings County, LLC, as the employees believe. In paragraph 5B, the Employer alleges that the Notice of Election created confusion as to who would employ the employees in the future. In paragraph 6B, the Employer alleges that the sample ballots failed to advise unit employees that they were voting for whether they wished to be employees of New York Methodist Hospital included in the existing clerical, technical, or service unit. In paragraph 8B of its objections, the Employer alleges that the Region’s conducting three elections for employees “to determine if they wanted to be divided into three separate bargaining groups at the Hospital as opposed to continue working together in one office unit at MSO caused voter confusion and destroyed the laboratory conditions.” The Petitioner asserts that these objections lack merit.

In its offer of proof, the Employer again relies on the single page of the Notice of Election described above, which contains the sample ballot. On that ballot, as on the Notice of Election and the actual ballot used during the election, the Employer is identified as “New York Methodist Hospital/MSO of Kings County, LLC.” The Employer also states that a named employee will testify “as to the confusion created by the failure to inform” employees about the identity of their Employer.

The Employer incorrectly characterizes the finding of the Decision and Direction of Election, which did not alter the identity of the employees’ Employer. The Decision and Direction of Election found that New York Methodist and MSO of Kings County constitute a single employer, a legal conclusion that does not change with the outcome of these elections. Contrary to the Employer’s assertions, the employees’ choice in these elections has no bearing on the identity of their Employer. The Employer’s assertion that employees were voting to determine whether they wanted to be divided into three bargaining units working at New York Methodist Hospital instead of working together in one office at MSO of Kings County, LLC, also distorts the question in front of employees. Employees’ choice on the ballot was only whether they wished to be represented by the Petitioner, which would not affect the identity of the Employer or whether the employees continue to work in one office.

Although the Employer names a witness it states will testify regarding the “confusion created by the failure to inform” employees about the identity of their Employer, such an offer of proof is not sufficiently specific to support its contention that employees were confused. The Board has long held that an objecting party must provide probative evidence in support of its objections; it is not sufficient to rely on mere allegation or suspicion. See Allen Tyler & Son, Inc., 234 NLRB 212, 212 (1978) (“In the absence of any probative evidence, [the Board] shall not require or insist that the Regional Director conduct a further investigation simply on the

basis of a 'suspicious set of circumstances'"). In Audubon Cabinet Company, 119 NLRB 349 (1957), the employer filed objections alleging, inter alia, that the union had "threatened, intimidated, and coerced" employees. In its offer of proof, the Employer identified witnesses but did not provide any specific evidence about what would be their testimony. The Board found that this offer of proof was not sufficient to warrant further investigation: "Objections, to merit investigation by a Regional Director, must be reasonably specific in alleging facts which prima facie would warrant setting aside an election. . . . In our opinion, the mere allegation that the Petitioner threatened, intimidated, and coerced employees constitutes a general conclusion devoid of any specific content or substance, which fails to satisfy the Board's requirement of reasonable specificity in the filing of objections." Audubon Cabinet, 119 NLRB at 350-51. The Employer's conclusory allegations that the employees were confused by notices of election and election ballots are not sufficient to support its objections. I note that the notices of election and the election ballots clearly identify the Employer as "New York Methodist Hospital/MSO of Kings County, LLC." Accordingly, I overrule the Employer's objections 3A, 3B, 4B, 5B, 6B, and 8B.

III. Conduct of the Election

In paragraph 5A of its objections, the Employer alleges that the Region affected the results of the election by conducting three elections in three separate bargaining units on the same date, in the same small room, at the same time.

In paragraphs 6A and 9B of its objections, the Employer alleges that it was objectionable for the Board to use three ballot boxes which were identified by voting group and corresponding ballot color for each voting group. The Employer alleges that the use of these boxes confused voters as to which unit they were voting in. In paragraphs 7A and 10 B of its objections, the Employer alleges that the Region created confusion by departing from the manner in which an election was conducted in a different case where the Region used one ballot box for an election involving two units.

In paragraphs 8A and 11B of its objections, the Employer alleges that the Board Agent acted improperly by directing each voter how to vote, how to mark his or her ballot, and how to place that ballot in the appropriate ballot box which the Board Agent hand selected for each employee. In paragraphs 9A and 12 B of its objections, the Employer alleges that the Board Agent affected the results of the election by providing some employees with ballots that were folded before the election. The Petitioner asserts that these objections lack merit.

In support of these objections, the Employer states that a named employee will testify that three "insufficiently marked ballot boxes" were lined up at the election; that "the presumed appropriate ballot box was physically segregated from the other ballot boxes for each individual voter;" and that some voters were given ballots that had already been folded.

The independent investigation revealed that elections in this case were held in accordance with the Direction of Election, which stated that the elections would be held simultaneously on Friday, July 8, from 10:30 a.m. to 11:30 a.m. in the lunch room of Suite C at the Employer's facility located at 1 Prospect Park West, Brooklyn, New York. At the election,

the Board provided different color ballots for each voting group, orange for Voting Group A, green for Voting Group B, and lilac for Voting Group C.

Discussion

Time, Place, and Location of the Election

The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See Ceva Logistics U.S., Inc., 357 NLRB 628 (2011) (in which the Board held that the Regional Director acted within his discretion when he directed an election on a day on which employees were scheduled to attend a meeting at the Employer's facility, but were not scheduled to work); San Diego Gas & Electric, 325 NLRB 1143 (1998) (in which the Board stated that a Regional Director has broad discretion in determining the arrangements for an election); Manchester Knitted Fashions, 108 NLRB 1366 (1954) (in which the Board stated that the Regional Director has the discretion to determine the time and place for an election). The Employer does not present any evidence to justify departing from the Regional Director's discretion regarding election details such as the date, time and place of the election.

Use of Three Ballot Boxes

The Employer alleges that the Board created confusion for voters by using three ballot boxes, which were labeled in black ink to identify each box by voting group and ballot color. The Employer further alleges that the Regional Office created confusion by departing from its practice in New York Methodist Hospital and MSO of Kings County, LLC, Case No. 29-RC-172398, where the Region ran two elections simultaneously using only one ballot box and two different ballot colors.³

The Employer alleges that the use of three ballot boxes created confusion, but does not specify how voters were confused. The Employer's offer of proof states that a named witness will testify "as to the manner in which the elections were conducted" and that the boxes were "insufficiently marked." The Employer concedes, however, that each box was identified by voting group and ballot color. As explained above, an objecting party must provide probative evidence in support of its objections. See Allen Tyler & Son, Inc., *supra*; Audubon Cabinet Company, *supra*. The Employer has not shown how the use of a single ballot box for each voting group created confusion or otherwise affected the results of the election. With regard to the Employer's argument that the Board departed from a practice in a case involving different employees, the Employer has not shown how any of the employees voting in this case could have been affected by the change or even known about the mechanics of the previous election. See Avante at Boca Raton, Inc., 323 NLRB 555, 560 (1997) (where the employer's objections were overruled absent a showing that unit employees know of the alleged objectionable conduct). There is no showing that any employee deposited a ballot in the incorrect ballot box.

³ I note that in New York Methodist Hospital and MSO of Kings County, LLC, Case No. 29-RC-172398, the Employer filed objections alleging that the Board acted improperly by using only one ballot box for two voting groups despite the use of different color ballots for each group.

To the contrary, there is no evidence that any voter voted in the wrong voting group, a result that would have been evident during the ballot count.

Conduct of the Board Agent Conducting the Election

The Employer alleges that the Board Agent conducting the election directed employees how to vote, how to mark their ballots, hand selected the appropriate box for employees to deposit their ballots, and that some voters were given ballots that had been folded before the election. The Employer states that a named employee will testify that "the presumed appropriate ballot box was physically segregated from the other ballot boxes for each individual voter" and that some voters were given ballots that had already been folded.

Board Agents conducting NLRB elections "must maintain and protect the integrity and neutrality of its procedures." Athbro Precision Engineering Corp., 166 NLRB 966, 966 (1967). The Employer offers no details to demonstrate that the Board Agent in this case committed any breach of Board protocol or in any way called the integrity of this election into question. I particularly note that the Employer offers no evidence to support its allegation that the Board Agent conducting the election directed employees how to vote or how to mark their ballots and thus cannot support such an allegation. See Allen Tyler & Son, Inc., *supra*; Audubon Cabinet Company, *supra*. It is also not clear how the Board Agent directing employees to deposit their ballots in the correct ballot box could be objectionable. To the contrary, the Board Agent directing employees to the correct ballot box would avoid confusion. As noted above, each employee used the correct ballot box. Finally, the Employer makes no showing that providing employees with ballots which had been folded, even if true, could have affected the results of the election.

The Employer has not demonstrated that the Region's election procedures or conduct affected the outcome of the election. Accordingly, I overrule the Employer's paragraphs 5A, 6A and 9B, 7A and 10B, 8A and 11B, 9 A and 11B of the objections.

IV. The Unfair Labor Practice Charge

In paragraphs 11A and 14B of its objections, the Employer alleges that the Petitioner engaged in objectionable conduct by filing a frivolous unfair labor practice charge against the Employer on behalf of a former employee. The Petitioner asserts that this objection lacks merit.

The independent investigation shows that on June 29, 2016, the Petitioner filed an unfair labor practice charge against the Employer in Case No. 29-CA-179325, alleging that the Employer violated the Act by retaliating against Melinda Feliciano for testifying at an NLRB representation hearing and by failing to maintain the status quo during the critical period. This charge is currently under investigation. On July 7, the Petitioner filed a request to proceed with the election in the instant case. Melinda Feliciano's name does not appear on any of the voter lists for the three units in this case.

Discussion

It is generally not objectionable for a party to file an unfair labor practice charge. Here, the Employer has not demonstrated how the election was affected by the filing of the unfair labor practice charge. Significantly, there is no evidence that the unit employees even knew that the Petitioner filed an unfair labor practice charge. It is well settled that the objecting party must show that alleged objectionable conduct affects employees in the voting unit. See Avante at Boca Raton, Inc., supra. Accordingly, I overrule paragraphs 11A and 14B of the Employer's objections.

V. Other Acts

In paragraphs 12A and 15B of its objections, the Employer alleges that by the conduct described in the above objections and other acts, the Regional Office engaged in conduct affecting the holding of a free and fair election.⁴ The Petitioner asserts that this allegation is without merit.

The Employer did not produce any evidence in support of this allegation that had not been submitted and considered in regard to the other objections. Accordingly, I overrule paragraphs 12A and 15 B of the Employer's objections.

SUMMARY AND DETERMINATIONS

In summary, I have overruled the Employer's objections in their entirety. Accordingly, I hereby issue the following Certifications of Representative certifying the Petitioner as the exclusive collective bargaining agent for the employees in the units:

CERTIFICATIONS OF REPRESENTATIVE

Voting Group A

It is certified that a majority of the valid ballots have been cast for 1199 SEIU, United Healthcare Workers East and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time administrative assistants and office assistants employed by the Employer in the Urology practice located at One Prospect Park West, Brooklyn, New York, are hereby included in the existing clerical employee bargaining unit represented by the Petitioner at New York Methodist Hospital, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

⁴ Paragraphs 1A and 1B of the Employer's objections state that the Regional Director prepared the notices of election, that the Employer posted those notices, and that the notices provided for elections to be held in Voting Groups A, B, and C at the same date, time, and location. The Employer does not allege objectionable conduct in this paragraph.

Voting Group B

It is certified that a majority of the valid ballots have been cast for 1199 SEIU, United Healthcare Workers East and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time clinical assistants (LPNs) employed by the Employer in the Urology practice located at One Prospect Park West, Brooklyn, New York, are hereby included in the existing technical employee bargaining unit represented by the Petitioner at New York Methodist Hospital, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

Voting Group C

It is certified that a majority of the valid ballots have been cast for 1199 SEIU, United Healthcare Workers East and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time patient/medical assistants employed by the Employer in the Urology practice located at One Prospect Park West, Brooklyn, New York, are hereby included in the existing service employee bargaining unit represented by the Petitioner at New York Methodist Hospital, excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

Request for Review

Pursuant to Section 102.69 (c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., a Request for Review of this Supplemental Decision. This Request for Review must conform with the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by Washington not later than **August 12, 2016**.

A Request for Review may be E-Filed through the Agency's website, but may not be filed by facsimile. To E-File the Request for Review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a Request for Review must serve a copy on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the Request for Review.

Dated at Brooklyn, New York, on this July 29, 2016.

A handwritten signature in black ink, reading "James G. Paulsen", written over a horizontal line.

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 29

NEW YORK METHODIST HOSPITAL AND MSO OF
KINGS COUNTY, LLC,

And

Case No. 29-RC-172410

1199SEIU, UNITED HEALTHCARE WORKERS
EAST,

**MSO OF KINGS COUNTY, LLC
OBJECTIONS TO CONDUCT OF ELECTIONS AND
CONDUCT AFFECTING THE RESULTS OF ELECTIONS**

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, MSO of Kings County, LLC ("MSO"), by their attorneys, Epstein Becker & Green, P.C., hereby submit the following Objections to the Conduct of the Elections and Conduct Affecting the Results of the Elections conducted by the Board in the above-captioned case on July 8, 2016. The National Labor Relations Board by its Regional Director for Region 29 and its agents ("the Board") engaged in conduct that affected the results of the three (3) separate elections conducted by the Regional Director on July 8, 2016 by creating voter confusion and interfering with voters' exercise of free choice as follows:

1. The Regional Director prepared and issued Official Notices of Election that MSO was required to post and which were posted providing for three (3) separate elections in Group A, Group B and Group C, to be held on the same date, at the same time, and at the same location.

2. The sample ballot attached to the Official Notice of Election failed to advise voters as to whether they were voting to join the Hospital's clerical employee bargaining unit, technical employee bargaining unit or service employee bargaining unit.

3. MSO employees assigned to work at Brooklyn Urology for physicians who were determined by the RD not to be their employer were not informed that the Hospital would be their employer – as opposed to MSO – if they voted for Union representation.

4. MSO employees were not advised on the ballot that their employer would no longer be exclusively MSO or the physicians who they believed was their employer over the past six (6) years.

5. The Notice set forth in Paragraphs 2, 3 and 4 created voter confusion as to who would employ the voters in the future.

6. The sample ballot attached to the Official Notice of Election failed to advise MSO employees that they were voting for whether or not they wished to be Hospital employees included in either an existing clerical, existing technical or existing service bargaining unit of New York Methodist Hospital employees.

7. The Board's failure to issue a clear notice destroyed the laboratory conditions necessary for a fair election and adversely affected the results of the July 8, 2016 election.

8. The RD's conducting of three (3) separate elections among the 13 MSO employees to determine if they wanted to be divided into three (3) separate bargaining groups at

the Hospital as opposed to continue working together in one office unit at MSO caused voter confusion and destroyed the laboratory conditions.

9. The Board utilized three (3) identical official ballot boxes which were hand marked in black pen and small print labeling each box respectively as: (i) Group A orange; (ii) Group B green; and (iii) Group C lilac. Neither the boxes nor the ink marking the boxes corresponded to the colored ballots used in the elections. The Board's decision to use three (3) separate boxes—which were insufficiently marked or identified—confused voters as to which election and which unit they were voting in.

10. The Board's decision to use three (3) ballot boxes dramatically altered the voting arrangement that it used for the elections in Case No. 29-RC-172398. The June 17, 2016 elections in that case were held in the same building and under essentially identical conditions as the elections at issue here, yet one (1) single ballot box was used for two (2) separate elections. This departure from the previously established election conduct was contrary to the RD's decision on objections in that case and caused confusion among voters.

11. The Board Agent actively directed each individual voter how to vote and how to mark his or her ballot and how to place the ballot in one of the three ballot boxes that the Board Agent herself hand selected and physically placed in front of each of voter.

12. The Board's conduct affected the results of the election by providing some voters with ballots that were pre-folded prior to the commencement of the elections.

13. The Board Agent's conduct affected the results of the July 8, 2016 election by utilizing ballots with identical content for the three (3) separate elections. These

ballots created voter confusion by: (i) not advising voters which unit they were voting in, and (ii) not advising voters that they would be voting whether or not they wished to be included in units already subject to an existing collective bargaining agreement.

14. 1199SEIU ("the Union") engaged in conduct affecting the necessary laboratory conditions required to ensure the free exercise of voter choice by filing of a frivolous unfair labor practice charge by a former MSO employee, who voluntarily resigned her employment, on the eve of the election.

15. By the foregoing, and other acts, the Board, its agents and representatives have engaged in conduct affecting the holding of a free and fair election on July 8, 2016. MSO respectfully requests that the results of the election in each unit—clerical, technical and service—be set aside and that other appropriate relief be granted.

Dated: New York, New York
July 15, 2016

EPSTEIN BECKER & GREEN, P.C.

By: 

James S. Frank, Esq.

Donald S. Krueger, Esq.


Attorneys for MSO of Kings County, LLC
250 Park Avenue
New York, New York 10177-1211
(212) 351-4500

CERTIFICATE OF SERVICE

I, Donald S. Krueger, certify that I caused a copy of MSO of Kings County LLC's Objections to the Conduct of Elections and Conduct Affecting the Results of Elections in Case No. 29-RC-172410 to be filed with Region 29 by facsimile and served on 1199SEIU, United Healthcare Workers East by electronic mail at the following address:

Gwynne A. Wilcox, Esq.
Levy Ratner, PC
80 Eight Avenue, Floor 8
New York, NY 10011
gwilcox@levyratner.com

Dated: New York, New York
July 15, 2016



UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 29

NEW YORK METHODIST HOSPITAL AND MSO OF
KINGS COUNTY, LLC,

And

Case No. 29-RC-172410

1199SEIU, UNITED HEALTHCARE WORKERS
EAST,

**NEW YORK METHODIST HOSPITAL'S
OBJECTIONS TO CONDUCT OF ELECTIONS AND
CONDUCT AFFECTING THE RESULTS OF ELECTIONS**

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, New York Methodist Hospital ("the Hospital"), by their attorneys, Epstein Becker & Green, P.C., hereby submit the following Objections to the Conduct of the Elections and Conduct Affecting the Results of the Elections conducted by the Board in the above-captioned case on July 8, 2016. The National Labor Relations Board by its Regional Director for Region 29 and its agents ("the Board") engaged in conduct that affected the results of the three (3) separate elections conducted by the Regional Director on July 8, 2016 by creating voter confusion and interfering with voters' exercise of free choice as follows:

1. The Regional Director prepared and issued Official Notices of Election that the Hospital was required to post and which were posted providing for three (3) separate elections in Group A, Group B and Group C, to be held on the same date, at the same time, and at the same location.

2. The sample ballot attached to the Official Notice of Election ("Notice") failed to advise voters as to whether they were voting in the clerical employee unit, the technical employee unit or the service employee unit.

3. MSO employees working at Brooklyn Urology were not informed that the Decision and Direction of Election altered their employer's status from working for MSO to working for the Hospital. The lack of Notice created voter confusion as to what entity employs the voters.

4. The sample ballot attached to the Official Notice of Election failed to advise voters that they were voting for whether or not they wished to be included in either an existing clerical, existing technical or existing service bargaining unit of New York Methodist Hospital employees.

5. The Board's conduct affected the results of the July 8, 2016 election by conducting three (3) separate elections for three (3) separate bargaining units on the same date, in the same small room and at the same time.

6. The Board utilized three (3) identical official ballot boxes which were hand marked in black pen and small print labeling each box respectively as: (i) Group A orange; (ii) Group B green; and (iii) Group C lilac. Neither the boxes nor the ink marking the boxes corresponded to the colored ballots used in the elections. The Board's decision to use three (3) separate boxes—which were insufficiently marked or identified—further confused voters as to which election and which unit they were voting in.

7. The Board's decision to use three (3) ballot boxes dramatically altered the voting arrangement that it used for the elections in Case No. 29-RC-172398. The June 17, 2016 elections in that case were held in the same building and under essentially identical conditions as the elections at issue here, yet one (1) single ballot box was used for two (2) separate elections. This departure from the previously established election conduct created confusion among voters.

8. The Board improperly directed each individual voter to mark his or her ballot and then to place the ballot in one of the three ballot boxes that the Board Agent herself hand selected and physically placed in front of each of voter.

9. The Board's conduct affected the results of the election by providing some voters with ballots that were pre-folded prior to the commencement of the elections.

10. The Board's conduct further affected the results of the July 8, 2016 election by utilizing ballots with identical content for the three (3) separate elections. These ballots created voter confusion by: (i) not advising voters which unit they were voting in, and (ii) not advising voters that they would be voting whether or not they wished to be included in units already subject to an existing collective bargaining agreement.

11. 1199SEIU ("the Union") engaged in conduct affecting the necessary laboratory conditions required to ensure the free exercise of voter choice by filing of a frivolous unfair labor practice charge against the Hospital by an individual who was never a Hospital employee.

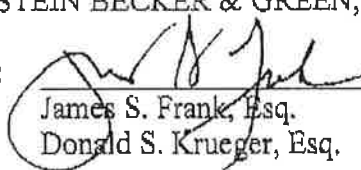
12. By the foregoing, and other acts, the Board, its agents and representatives have engaged in conduct affecting the holding of a free and fair election on July 8, 2016. The

Hospital respectfully requests that the results of the election in each unit—clerical, technical and service—be set aside and that other appropriate relief be granted.

Dated: New York, New York
July 15, 2016

EPSTEIN BECKER & GREEN, P.C.

By:


James S. Frank, Esq.
Donald S. Krueger, Esq.

Attorneys for New York Methodist Hospital
250 Park Avenue
New York, New York 10177-1211
(212) 351-4500

